

support this assertion. The Office has merely stated the conclusion. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Accordingly, Applicants respectfully submit that the Restriction Requirement should be withdrawn.

Applicants further traverse on the additional ground that hundreds of patents have issued which claim varying degrees of homology in their sequences. Such claims are, in fact, drawn to hundreds of unique protein sequences. In light of this information, it is clear that the Office does not view a unique sequence of a protein as a generally acceptable basis on which a Restriction Requirement is based. In light of the above, Applicants respectfully submit that if the Office finds that hundreds of polypeptides having 90% homology therein are not distinct, it is difficult for the Office to maintain that less than ten sequences are distinct, nor can the Office maintain that it would be burdensome to search less than ten sequences in light of the above.

Applicants further traverse the Restriction Requirement on the additional ground that a search of all the claims would not impose a serious burden on the Office. The MPEP in §803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

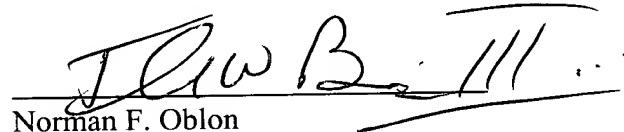
Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office and the Restriction Requirement. Applicants respectfully submit that the Restriction Requirement is unsustainable; and therefore, it should be withdrawn.

In addition, Applicants have amended Claim 4 to remove multiple dependency.
Further, Applicants have added Claims 6-8 in which support is found within originally filed Claim 4. No new matter is believed to be introduced by the above amendment.

Applicants further submit that this application is in condition for examination on the merits and an early notification to that effect is earnestly solicited.

Respectfully submitted,

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Marked-Up Copy
Serial No: 09/636,458
Amendment Filed on:
Herewith

IN THE CLAIMS

Please amend Claim 4 as follows:

--4. (Amended) [The plasmid or the derivative thereof according to claim 1] A plasmid isolatable from *Corynebacterium thermoaminogenes*, which comprises a gene coding for a Rep protein having the amino acid sequence shown in SEQ ID. NO: [2,4 OR 6] 4 or an amino acid sequence having homology of 99% or more to the amino acid sequence shown in SEQ ID NO: 4, and has a size of about 4.4 kb, or a derivative thereof.--

--Claims 6-8 are added.--